



Natural Resources Conservation Service
1201 NE Lloyd Blvd., Suite 900
Portland, OR 97232

March 7, 2008

OREGON BULLETIN NO. OR-300-2008-6

SUBJECT: CSP - Contract Administration – Guidance regarding the development and documentation of the Administrative Record for Conservation Security Program (CSP) contract modifications.

Purpose. Purpose: This bulletin provides guidance for the evaluation, approval, and documentation of modifications to Conservation Security Program (CSP) contracts. The guidance addresses (1) preliminary considerations, (2) requests to change the benchmark conservation system; and, (3) loss of control of the land.

Expiration Date. September 30, 2009.

Background: Public Law 107-171 defines the Conservation Security Program's (CSP) purpose as the "conservation and improvement of the quality of soil, water, air, energy, plant and animal life..." The CSP regulations and contract requirements provide that CSP participants "agree to maintain at least the level of stewardship identified in the benchmark inventory for the entire contract period, and implement and maintain any new practices or activities required in the contract." During contract administration it is critical to recognize that CSP contracts represent a mutual agreement of expectations clarified in the contract, the appendix and the stewardship plan.

NRCS has no expressed permissions to renegotiate contracts. Consequently, any change and ensuing modification to the stewardship plan or CSP contract require careful evaluation and justification. This decision process shall be documented as part of the administrative record and may be examined in future contract audits or appeal proceedings. Each contract modification must have valid reasons and sound justification not adverse to the Government's interest and conservation objectives.

This guidance pertains to when a participant requests modification to their CSP contract. NRCS's primary guidance on CSP contract modifications is presented in CPM, Part 518, subpart K. Based on the participant's request and agency guidance, NRCS will consider the modification and determine if it is adverse to the government's interest and the contract's conservation objectives.

The following is a repeatable process for evaluating modifications and documenting agency decisions. The first section is a preliminary list of considerations for evaluating CSP modification requests. The next sections pertain to more specific situations. To document the decision process each section has a form with an NRCS signatory block. NRCS is to ensure that appropriate actions are taken to prevent waste, fraud or abuse when evaluating modifications.

(1) Preliminary CSP Modification Considerations:

NRCS evaluates modification requests to determine if the requested modification is adverse to the government's interests and conservation objectives. The following items are preliminary considerations to evaluate on all CSP modifications. These considerations need to be documented in Section I of the attached form for all modifications. The completed form shall be placed in the contract file.

- Has the CSP contract participant requested the modification in writing (letter, email, or fax)? Attach a copy of the correspondence.
- Will the requested modification limit the participant's ability to maintain the level of stewardship identified in the benchmark inventory (i.e., benchmark treatment level)? If yes, go (2) Modifications to Benchmark Conservation System.
- Will the requested modification limit the participant's ability to carryout all the scheduled conservation treatments? If yes, then provide sound justification why the modification is not adverse to the government's interest and conservation objectives.
- Does the modification increase the financial obligations in the CSP contract modifications that increase CSP contract obligation amounts are contract improvement modifications and are ONLY allowed during a designated contract improvement period.

(2) Modifications to the Benchmark Conservation System:

CSP policy requires that benchmark treatment levels will be maintained for the lifespan of the contract. However, a CSP participant's request to modify a CSP contract to lower benchmark treatment levels should be anticipated. This may be the result of various market or environmental factors. Requests from a participant to modify a CSP contract to lower benchmark treatment levels will be handled using the following guidelines. Document the decision process using Section II of the attached form and place it in the contract file.

1. Each request will be handled on a case-by-case basis. No formal state policy will be established.

2. NRCS staff will provide technical assistance to the participant in an effort to develop alternatives that will not require a reduction in benchmark treatment levels. The Leader for Technology will give technical concurrence of the proposed modification prior to the State Conservationist prior to approval of the modification.

3. When a participant's conservation system must be changed due to factors beyond their control, such as changes in national, state, local or tribal statutes, changes in weather conditions, or changes in economic conditions, and no other alternatives are feasible, then the NRCS should consider allowing the CSP contract to modified without penalty to the participant and without repayment of previous stewardship enhancement payments.

4. In no cases will contracts be modified such that treatment levels are reduced below the original minimum requirement for Tier and Category placement achieved by the participant at the time of application.

5. State Conservationist will approve all such modifications based on prior concurrence of the District Conservationist, Basin Team Leader, and Leader for Technology.

(3) Modifications due to loss of control of the land (CPM 518.100 D, National Bulletin 300-8-12)

A CSP contract participant is expected to have control of the enrolled acres for the life of the contract. Situations will arise where a contract participant may lose the control of the land due to voluntary actions (such as sale of the land) or involuntarily (such as bankruptcy). The evaluation and decision process for modifications for a loss of land have implications for cost recovery decisions. Document the decision process using Section III of the attached form and place it in the contract file.

- Was the loss of control of the land voluntary? If no, go to the next item. If yes, then NRCS will evaluate the impact on the contract with respect to meeting CSP program conservation objectives and the potential for cost recovery. The contract participant will provide an explanation of loss of control. The participant may request that the STC consider a waiver or reduction of cost recovery.

- Was the loss of control of the land involuntary? If yes, the CSP participant must provide to NRCS the following:

- o Written notification of loss of control from the current landowner; and
 - o A written statement stating loss of control, describing the land, and requesting its removal from the contract.

- o If the participant can not provide both of the above, the participant must provide a letter to the STC describing the situation and requesting that the contract be cancelled or land removed from the contract.

- o Loss of land under a CSP contract by a non-landowner participant due to actions of the landowner will be considered as involuntary on the part of the contract participant. Any action by a landowner to change the terms, conditions, or lessee may be considered beyond the control of a tenant.

- For both the voluntary and involuntary situations NRCS shall determine (CPM 518.100 A (2)(ii):

- o With land removed from the contract, will the treatment level remain the same?
 - o With land removed from the contract, is the contract consistent with the purposes and goals of CSP?

/signed/

WILLIAM WHITE
Leader - Programs

Enclosure

cc via website:

<http://www.or.nrcs.usda.gov/intranet/bulletins/bulletins07-08.html>
<http://www.or.nrcs.usda.gov/intranet/bulletins/>

Attachments: Oregon CSP Modification Documentation Form:

Section I: Preliminary CSP Modification Considerations.		
Date of Request:		
Contract Number:		
Contract Name:		
Instructions: NRCS evaluates modification requests to determine if the requested modification is adverse to the government's interests and conservation objectives. These items are basic considerations to evaluate all CSP modifications. These initial considerations need to be documented for all modifications. Documentation shall be placed in the contract file.		
Preliminary CSP Modification Considerations	Yes	No
Has the CSP contract participant requested the modification in writing (letter, email, or fax)? Attach a copy of the correspondence.		
Will the requested modification limit the participant's ability to maintain the level of stewardship identified in the benchmark inventory (i.e., benchmark treatment level)? If yes, go to (2) Modifications to Benchmark Conservation System.		
Will the requested modification limit the participant's ability to carryout all the scheduled conservation treatments? If yes, then provide sound justification why the modification is not adverse to the government's interest and conservation objectives.		
Does the modification increase the financial obligations in the CSP contract? If yes, then the modification is a contract improvement modification and cannot be submitted except during an announced contract improvement modification period.		
Signature of District Conservationist concurring with requested modification:		Date:
Signature of Basin Team Leader concurring with requested modification:		Date:
Signature of Leader for Programs approving modification:		Date:
Additional information or comments:		

Section II: Documentation for CSP Contract Modifications to Benchmark Conditions.

Date of Request:

Contract Number:

Contract Name:

Explanation of Request for Contract Modifications of Benchmark Conditions:

Is the requested modification to the participant's conservation system due to (Check if applicable)

- ☐ Changes in factors beyond their control, such as changes in national, state, local or tribal statutes.
- ☐ Changes in weather conditions or
- ☐ Changes in economic conditions.
- ☐ No other alternatives are feasible.

Explanation of NRCS technical assistance provided to the participant to develop alternatives not requiring a reduction in benchmark treatment levels:

Describe the requested modification. Be sure to demonstrate the changes to the benchmark conditions in the current contract:

Does the requested modification reduce the treatment levels below the original minimum requirements for Tier and Category placement achieved by the participant at the time of application?

(Circle one.) Yes No

If yes, the modification will be denied. May require contract cancellation / termination and related cost recovery.

Signature of Contract Participant requesting modification:

Date:

Signature of District Conservationist concurring with requested modification:

Date:

Signature of Basin Team Leader concurring with requested modification:

Date:

Signature of Leader for Technology concurring with technical evaluation of the requested modification:

Date:

Signature of State Conservationist approving modification:

Date:

Additional information or comments:**Section III: MODIFICATIONS DUE TO LOSS OF CONTROL OF THE LAND** (CPM 518.100 D, NATIONAL BULLETIN 300-8-12)**Date of Request:****Contract Number:****Contract Name:**

A CSP contract participant is expected to have control of the enrolled acres for the life of the contract. Situations will arise where a contract participant may lose the control of the land due to voluntary or involuntarily actions. The evaluation and decision process for modifications for a loss of land have implications for cost recovery decisions.

	Yes	No
Was the loss of control of the land voluntary? If no, go to the next item. If yes, then NRCS will evaluate the impact on the contract with respect to meeting CSP conservation objectives and the potential for cost recovery. The contract participant will provide an explanation of loss of control. The participant may request that the STC consider a waiver or reduction of cost recovery.		
Was the loss of control of the land involuntary? If yes, the CSP participant must provide to NRCS the following: <ul style="list-style-type: none"> • Written notification of loss of control from the current landowner; and • A written statement stating loss of control, describing the land, and requesting its removal from the contract. • If the participant can not provide both of the above, the participant must provide a letter to the STC describing the situation and requesting that the contract be cancelled or land removed from the contract. • Loss of land under a CSP contract by a non-landowner participant due to actions of the landowner will be considered as involuntary on the part of the contract participant. Any action by a landowner to change the terms, conditions, or lessee may be considered beyond the control of a tenant. 		
For both the voluntary and involuntary situations NRCS shall determine (CPM 518.100 A (2)(ii): <ul style="list-style-type: none"> ○ With land removed from the contract, will the treatment level remain the same? ○ With land removed from the contract, is the contract consistent with the purposes and goals of CSP? 		
Signature of District Conservationist concurring with requested modification:	Date:	
Signature of Basin Team Leader concurring with requested modification:	Date:	

Signature of Leader for Programs approving modification:	Date:
Additional information or comments:	